UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DERICK NICHOLSON,

Plaintiff,

-against-

Detective GARBIEL ECHEVARRIA, Shield No. 28489; Sergeant PATRICK DIVERS, Shield No. 01566; Detective CHRISTOPHER LOPEZ, Shield No. 21972; Detective PETER HOEFLINGER, Shield No. 03870; Detective ANGELO CUOZZO, Shield No. 01628; Detective VIRGIL CUMBERBATCH, Shield No. 05766; Detective VINCENT TIERNAN, Shield No. 21213; Detective WILLIAM WARREN, Shield No. 02757; Detective Detective RASHAN LACOSTE, Shield No. 24401; UC CO-98; Police Officers JOHN and JANE DOES 1 through 10, individually and in their official capacities, (the names John and Jane Doe being fictitious, as the true names are presently unknown),

Defendants.

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FIRST AMENDED COMPLAINT

Jury Trial Demanded

12 CV 2133 (RRM) (RML)

NATURE OF THE ACTION

1. This is an action to recover money damages arising out of the violation of plaintiff's rights under the Constitution.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c).

JURY DEMAND

5. Plaintiff demands a trial by jury in this action.

PARTIES

6. Plaintiff Derick Nicholson ("plaintiff" or "Mr. Nicholson") is a resident of Kings County in the City and State of New York.

7. Defendant Detective Gabriel Echevarria, Shield No. 28489 ("Echevarria"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Echevarria is sued in his individual and official capacities.

8. Defendant Sergeant Patrick Divers, Shield No. 01566 ("Divers"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Divers is sued in his individual and official capacities.

9. Defendant Detective Christopher Lopez, Shield No. 21972 ("Lopez"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Lopez is sued in his individual and official capacities.

10. Defendant Detective Peter Hoeflinger, Shield No. 03870 ("Hoeflinger"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Hoeflinger is sued in his individual and official capacities.

11. Defendant Detective Angelo Cuozzo, Shield No. 01628 ("Cuozzo"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Cuozzo is sued in his individual and official capacities.

12. Defendant Detective Virgil Cumberbatch, Shield No. 05766 ("Cumberbatch"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Cumberbatch is sued in his individual and official capacities.

13. Defendant Detective Vincent Tiernan, Shield No. 21213 ("Tiernan"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Tiernan is sued in his individual and official capacities.

14. Defendant Detective William Warren, Shield No. 02757 ("Warren"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Warren is sued in his individual and official capacities.

15. Defendant Detective Rashan Lacoste, Shield No. 24401 ("Lacoste"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Lacoste is sued in his individual and official capacities.

16. Defendant UC CO-98, at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant UC CO-98 is sued in his or her individual and official capacities.

17. At all times relevant defendants John and Jane Doe 1 through 10 were police officers, detectives or supervisors employed by the NYPD. Plaintiff does not know the real names and shield numbers of defendants John and Jane Doe 1 through 10.

18. At all times relevant herein, defendants John and Jane Doe 1 through 10 were acting as agents, servants and employees of defendant City of New York and the NYPD. Defendants John and Jane Doe 1 through 10 are sued in their individual and official capacities.

19. At all times relevant herein, all individual defendants were acting under color of state law.

STATEMENT OF FACTS

20. At approximately 2:00 p.m. on June 14, 2011, plaintiff was lawfully in the vicinity of Ralph Avenue between Sterling Place and Park Place in Brooklyn, New York.

21. Three of the defendant officers, dressed in plainclothes, suddenly approached plaintiff and began choking him.

22. The officers lacked reasonable suspicion to stop plaintiff.

23. As they were choking him, the officers screamed, in sum and substance, "where are the drugs, spit it out."

24. Plaintiff was not in possession of any drugs and did not know what the officers were talking about.

25. Plaintiff was arrested, placed into a police van and taken to a police precinct.

26. The officers lacked probable cause to arrest plaintiff for any crime.

27. Plaintiff was falsely charged with Criminal Sale of a Controlled Substance.

28. Approximately ten hours later plaintiff was transported to Brooklyn Central Booking where he remained for approximately two days.

29. The officers falsely informed employees of the Kings County District Attorney's Office that they had observed plaintiff engaged in the sale of drugs.

30. The officers had not observed plaintiff engaged in the sale of drugs.

31. Plaintiff could not make bail and was transported to Riker's Island where he remained for approximately eight days before all charges against him were dismissed.

32. After spending approximately 10 days in custody, all charges against plaintiff were dismissed.

33. Plaintiff suffered damage as a result of defendants' actions. Plaintiff was deprived of his liberty, suffered emotional distress, mental anguish, fear, pain, bodily injury, anxiety, embarrassment, humiliation, and damage to his reputation.

FIRST CLAIM
Unlawful Stop and Search

34. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

35. Defendants violated the Fourth and Fourteenth Amendments because they stopped and searched plaintiff without reasonable suspicion.

36. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages herein before alleged.

SECOND CLAIM
False Arrest

37. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

38. Defendants violated the Fourth and Fourteenth Amendments because they arrested plaintiff without probable cause.

39. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

THIRD CLAIM
Unreasonable Force

40. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

41. The defendants violated the Fourth and Fourteenth Amendments because they used unreasonable force on plaintiff.

42. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

FOURTH CLAIM
Malicious Prosecution

43. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

44. By their conduct, as described herein, and acting under color of state law, defendants are liable to plaintiff under 42 U.S.C. § 1983 for the violation of his constitutional right to be free from malicious prosecution under the Fourth and Fourteenth Amendments to the United States Constitution.

45. Defendants' unlawful actions were done willfully, knowingly, with malice and with the specific intent to deprive plaintiff of his constitutional rights. The prosecution by defendants of plaintiff constituted malicious prosecution in that there

was no basis for the plaintiff's arrest, yet defendants continued with the prosecution, which was resolved in plaintiff's favor.

46. As a direct and proximate result of defendants' unlawful actions, plaintiff suffered the damages hereinbefore alleged.

FIFTH CLAIM
Denial Of Constitutional Right To Fair Trial

47. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

48. The individual defendants created false evidence against plaintiff.

49. The individual defendants forwarded false evidence to prosecutors in the Kings County District Attorney's office.

50. In creating false evidence against plaintiff, and in forwarding false information to prosecutors, the individual defendants violated plaintiff's constitutional right to a fair trial under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution.

51. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages herein before alleged.

SIXTH CLAIM
Failure to Intervene

52. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

53. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity prevent such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

54. Accordingly, the defendants who failed to intervene violated the Fourth and Fourteenth Amendments.

55. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests judgment against defendants as follows:

(a) Compensatory damages against all defendants, jointly and severally;

(b) Punitive damages against the individual defendants, jointly and severally;

(c) Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and

(d) Such other and further relief as this Court deems just and proper.

DATED: November 5, 2012
New York, New York

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